IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Teja Ram v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.1364/1993
under Articles 226 and 227 of the Constitution of India.

Date of Order : 24th April, 2006

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. L.R. Mehta, with Mr.Arun Bhansali, for the petitioner.
Mr. RPS Choudhary, Additional Advocate General.
Mr. M.R.Singhvi, for Rebari Samaj Sansthan Vikas Samiti.
Mr. Bheem Arora, for Municipal Council, Barmer.

BY THE COURT :

The validity and propriety of the judgment dated 27.5.1992 passed by Board of Revenue for Rajasthan, Ajmer is questioned by the petitioner in this petition for writ. By the judgment impugned the Board of Revenue while accepting the reference made to it under Section 221 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as “the Act of 1955”) quashed the order dated 15.5.1984 passed by the Revenue Appellate Authority, Jodhpur in Appeal No.111/83, Tejaram v. State of Rajasthan.

The facts necessary to be noticed to elucidate the controversy involved in this petition for writ are that in jagir of Barmer Pargana Malani prior to its resumption five cotriges of Jagirdars known as Rawtanis, Kishnanis, Bisnanis, Pabanis and Khinwanis were in existence and everyone out of five cotriges above was entitled to grant patta of the land within the jagir. The grant of patta and maintenance of revenue record in Barmer jagir was in most haphazard manner to the extent that no record of grants was then detailed and kept. According to the petitioner he was having old possession on the land belonging to Jagirdars of Barmer, therefore, by realising a sum of Rs.800/- a patta was issued in his favour by Jagirdars of Barmer on Posh Sudi Tritiya of samvat year 1996. The patta was pertaining to land having area of 700x450 hath, which according to the petitioner is equivalent to 55.75 bighas of land. The jagir of the jagirdars of Barmer was resumed in the year 1956 and at the time of settlement which took place in the year 1955-56 the land in dispute was recorded as “Bila Kabja Sarkari Padat” and was included in khasra No.1468.

The petitioner by a notice issued by Tehsildar, Barmer exercising powers under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as “the Act of 1956”) was called upon as

to why he be not dispossessed from the illegal occupation from the land situated in khasra No.1468. A reply to the same was submitted by the petitioner on 18.2.1980. The petitioner after submission of reply to the notice served upon him under Section 91 of the Act of 1956 filed a suit on 29.4.1980 before the court of Assistant Collector, Barmer to declare the land in dispute under his tenancy.

A written statement was filed by the Tehsildar and on basis of pleadings three issues were framed by the Assistant Collector as follows:-

> (1)WHETHER the plaintiff since the settlement of land or prior to that is in cultivatory possession of the land measuring 54 bighas in khasra No.1468 village Barmer and the plaintiff, therefore, is khatedar of the land?
>
> (2)WHETHER the plaintiff purchased the land from the former jagirdars of Barmer in samvat 1996 and since then he is having possession on that land?
>
> (3)Relief?

Statements of M/s. Sohan Singh, Narpat Singh and the petitioner himself were recorded in support of the suit and the statements of patwari of the patwar circle concerned were recorded in rebuttal. The Assistant Collector by judgment dated 25.3.1983

dismissed the suit. The Assistant Collector decided the issues No.1 and 2 against the petitioner and, therefore, declared him not entitled for any relief as claimed. The Assistant Collector on basis of available revenue record held that the petitioner was having possession over some part of the land in dispute during the period commencing from samvat 2021 to 2026 and thereafter for some period from samvat 2036 to 2039. The Assistant Collector held that during the period aforesaid the petitioner was having encroachment on the land which is shown as “Bila Kabja Sarkari Padat” in the revenue records. The Assistant Collector while deciding the issue No.2 against the petitioner held that the plaintiff failed to satisfy with regard to sale of land to him by former Jagirdars of Barmer. While deciding the issue No.2 the Assistant Collector doubted the genuineness of the patta Ex.7 which according to the petitioner was granted to him by former jagirdars of Barmer. The Assistant Collector observed that there was no reason to measure the land in haths as an agricultural land in normal course is measured in bighas or in pawandas.

The petitioner assailed validity and propriety of the judgment and decree dated 25.3.1983 passed by the Assistant Collector by way of filing an appeal under Section 223 of the Rajasthan Tenancy Act, 1955 before the Revenue Appellate Authority, Jodhpur. The Revenue Appellate Authority by its judgment dated

15.5.1984 accepted the appeal and decreed the suit declaring the petitioner as khatedar of the land in dispute. The Revenue Appellate Authority on the basis of the fact that the petitioner was having possession over the land in question from samvat 2021 to 2026 and then from samvat 2036 to 2039 drew a presumption of continuous possession of the petitioner on the land concerned. The Revenue Appellate Authority while drawing the presumption as above relied upon the judgment of Hon'ble Supreme Court in the case of Ambika Prasad Thakur and others v. Ram Ekbal Rai, reported in AIR 1966 SC 605 holding therein that if a thing or state of things is shown to exist, an inference of its continuity within a reasonable proximate time both forwards and backwards may be drawn in light of illustration (d) noticed under Section 114 of Indian Evidence Act. The Revenue Appellate Authority while relying upon the statements given by Sohan Singh and Narpat Singh also found the patta Ex.7 as a genuine document.

The validity of the judgment and decree dated 15.5.1984 passed by the Revenue Appellate Authority was not challenged by State of Rajasthan by way of filing appeal or revision, however, an application by the Collector, Barmer was filed in the year 1986 under Section 221 of the Act of 1955 to examine validity and propriety of the judgment dated 15.5.1984 passed by the Revenue Appellate Authority, Jodhpur in Appeal

No.111/83. The Board of Revenue by its judgment dated 27.5.1992 accepted the application preferred under Section 221 of the Act of 1955 and set aside the judgment dated 15.5.1984 passed by the Revenue Appellate Authority, Jodhpur. The Board of Revenue by its judgment dated 27.5.1992 held that plaintiff Tejaram failed to prove his continuous possession on the land in dispute and also held that the patta Ex.7 was not genuine one. A review petition under Section 229 of the Act of 1955 was filed by the petitioner before the Board of Revenue and that too came to be rejected by order dated 15.2.1993. Hence this petition for writ is preferred to challenge the judgment dated 27.5.1992 passed by Board of Revenue.

While giving challenge to the judgment impugned it is contended by counsel for the petitioner that:

(1)the Board of Revenue erred while entertaining an application under Section 221 of the Act of 1955 giving challenge to the judgment and decree dated 15.5.1984 passed by the Revenue Appellate Authority as the same was never challenged by State of Rajasthan by way of filing an appeal or revision petition as the case may be.

(2)no reference under Section 221 of the Act of 1955 could have been maintained before the Board of Revenue after a lapse of a period of two years from the date of judgment and decree.

(3)the Board of Revenue erred while holding that possession of the petitioner was not continuous on the land in question.

(4)the Board of Revenue erred while creating doubt about genuineness of the document Ex.7.

As stated above, the first contention of counsel for the petitioner is that the Board of Revenue should not have entertained the application under Section 221 of the Act of 1955 as no appeal or revision was filed by State of Rajasthan within the limitation prescribed or otherwise giving challenge to the judgment and decree dated 15.5.1984. According to counsel for the petitioner the powers under Section 221 of the Act of 1955 cannot be invoked only to cover up latches of a party. These powers are extraordinary powers and should be used only in exceptional circumstances and no exceptional circumstance exist in present set of facts warranting interference of the Board under the provision referred above.

I am having no doubt that the powers under Section 221 of the Act of 1955 should not be exercised generally where a remedy by way of appeal or revision is available and the same is not availed by the party. The powers under Section 221 of the Act of 1955 are required to be exercised sparingly where gross illegality in justice has been committed by subordinate court. These powers are and not meant to

correct minor errors of fact but are to rectify patent illegality or clear violation of law committed by the subordinate court. Section 221 of the Act of 1955 confers powers on the Board to set aside orders of subordinate court where breach of law is committed and error is apparent on face of record. Wherever a decree is passed without any evidence effecting rights of State and public at large resulting in injustice, the powers under Section 221 of the Act of 1955 can be exercised.

In the present matter though no appeal or revision was filed by the State giving challenge to the judgment and decree dated 15.5.1984 passed by the Revenue Appellate Authority, Jodhpur but the Board of Revenue rightly interfered with the matter as the Revenue Appellate Authority travelled beyond the jurisdiction vested with it by accepting and decreeing the suit without having sufficient evidence and by drawing erroneous presumption with regard to possession of the petitioner over the land. It is not a simple error of fact but a grave error of law warranting rectification under Section 221 of the Act of 1955. It is also relevant to note that the public servant while discharging their duties some time fails to protect rights of the State which is custodian of public property, therefore, only on the count that appeal or revision, as the case may be, was not filed giving challenge to the judgment and decree, it cannot

be said that the Board was not competent to entertain application under Section 221 of the Act of 1955. In fact the extraordinary powers as are of Section 221 of the Act of 1955 are meant to meet the situation effecting the rights of people or of the State jeopardised due to grave error or slackness or illegality on part of the subordinate authorities.

In the instant matter the Board of Revenue in quite unambiguous terms held that there was no evidence to prove possession of the petitioner over a huge chunk of land and the Revenue Appellate Authority erroneously drawn presumption with regard to continuous possession of the petitioner and such an error could be rectified only by exercising powers under Section 221 as no appeal was filed by the State authorities giving challenge to the judgment and decree dated 15.5.1984, therefore, the Board of Revenue rightly interfered with the matter to protect the public property.

The next contention of counsel for the petitioner is that the Board erred while exercising the powers under Section 221 of the Act of 1955 at a belated stage, is also having no merit. It is true that this Court in the case of State of Rajasthan v. Teja & Ors., reported in 2005(4)RDD 921 (Raj)(DB), held that the power to make reference under Section 82 of the Act of 1956 is required to be exercised within

a reasonable time otherwise it may have arbitrary effects. But in the instant matter I do not find any such inordinate delay which could have effected the rights of the petitioner arbitrarily specially in the circumstances that in reply to the writ petition the respondents have created lot of doubts with regard to genuineness of the patta on basis of which the petitioner is claiming rights over the land. It is the position admitted that the age of the petitioner at the time of executing the patta was of nine years. It is also an important fact that a claim is made by the respondent No.6 i.e. the Rebari Samaj Sansthan Vikas Samiti, that in the land in dispute a cremation ground of Rebari Samaj is existing since immemorial. If an effort is made by the Board of Revenue at the instance of State of Rajasthan to elucidate the dispute with regard to the claim made by the petitioner and other interested parties, then it cannot be said that the reference under Section 221 of the Act of 1955 is unjust or suffers from arbitrariness rather it is a right approach for settling the issues which may otherwise create so many problems including the problem of law and order.

The counsel for the petitioner has given challenge to the judgment on the count that even according to available revenue records the petitioner was having possession over the part of land in question from samvat 2021 to 2026 and the from 2036 to

2039, therefore, in view of illustration (d) to Section 114 of the Indian Evidence Act a presumption was required to be drawn with regard to continuous possession of the petitioner. According to counsel for the petitioner the Revenue Appellate Authority while relying upon the judgment of Hon'ble Supreme Court in the case of Ambika Prasad Thakur (supra) rightly drew presumption with regard to continuous possession of the petitioner over the land. The counsel for the petitioner reiterated the reliance upon the judgment of Hon'ble Supreme Court in the case of Ambika Prasad Thakur (supra). It is true that in the case of Ambika Prasad Thakur (supra) Hon'ble Supreme Court held that presumption of future continuance as noticed in illustration (d) of Section 114 of the Indian Evidence Act, 1872 in appropriate cases can be applied to its backward continuity also. While holding as above in the same case Hon'ble Supreme Court also held that presumption of continuity weakens with passage of time and how far the presumption may be drawn both backward and forward, depends upon the nature of things and surrounding circumstances. The Revenue Appellate Authority while drawing presumption with regard to continuous possession of the petitioner over the land in dispute in fact has not applied the law propounded by Hon'ble Supreme Court in the case of Ambika Prasad Thakur (supra) in its totality. The petitioner was never having possession over the complete land as claimed by him to be under his possession.Some part of

the land varying year to year remained in possession of the petitioner from samvat 2021 to 2026 and then from samvat 2036 to 2039. No explanation is offered by the petitioner for a gap of 10 years i.e. from samvat 2026 to 2036 about not having possession over the land in question. No sufficient explanation is given by the petitioner as to how and why the land was not entered in his tenancy if he was having possession over it at the time of settlement in the year 1955-56. As a mater of fact by a passage of time the presumption as wanted to be drawn by the petitioner has not only weaken but is totally unwarranted. The circumstances of the case, as stated above, do not prove continuous possession of the petitioner on the land concerned. In view of it I do not find any error in the finding given by Board of Revenue to the effect that the petitioner was never in continuous possession of the land in dispute.

The contention of counsel for the petitioner to the effect that the Board of Revenue erred while disbelieving the testimony of M/s Sohan Singh and Narpat Singh is also having no merit. The Board of Revenue after considering totality of facts and circumstances of the case reached at the conclusion that the document Ex.7 which is said to be a patta issued by former jagirdars of jagir Barmer does not bear confidence. As I have already stated in preceding paras that the petitioner failed to give any plausible explanation as to why the land was not entered in his

khatedari at the time of settlement proves it well that the petitioner was not in possession of the land in question. The petitioner also failed to satisfy the Court as to why he never gave challenge or claim by way of filing a suit before the competent authority to declare him a khatedar of the land, if his name was not entered in the revenue records as tenant at the time of settlement. In these facts and circumstances of the case the tenancy rights as claimed could not be declared in favour of the petitioner merely on basis of the oral evidence. The Board of Revenue, therefore, rightly ignored the statements given by Sohan Singh and Narpat Singh.

In view of whatever discussed above, I do not find any merit in the writ petition which may warrant interference of this Court under Articles 226 and 227 of the Constitution of India.

The writ petition, therefore, is dismissed with no order as to costs.

(GOVIND MATHUR),J.

kkm/ps.